

REMARKS:

Claims 10 and 18 have been amended by this paper and claims 19 and 20 have been cancelled. Claims 3-5, 7, 10, 12, 13, 15 and 18 are now pending in this application.

The amendments to claims 10 and 18 emphasize that the claimed ambient air to crabmeat ratio is present in the flexible pouch after the flexible pouch has been sealed. Support for the amendments to claims 10 and 18 may be found in paragraphs 12 and 13 (page 4) of the specification. No new matter has been added.

The Examiner has maintained the following four grounds of rejection:

- A. Claims 3-5, 7, 10, 12, 13, 15 and 18-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over (1) U.S. Patent No. 5,268,189 to Doerter (the "Doerter reference") in view of (2) Peterson, M. E., G. A. Pelroy, F. T. Poysky, R. N. Paranjpye, F. M. Dong, G. M. Pigott and M. W. Eklund. "Heat-Pasteurization Process for Inactivation of Nonproteolytic Types of *Clostridium botulinum* in Picked Dungeness Crabmeat." *Journal of Food Protection* 60(8) (1997): 928-934 (the "Peterson reference"), (3) U.S. Patent No. 2,546,428 to Byrd (the "Byrd reference"), (4) Air Liquide Canada, "Packaging and Preserving Fish and Sea Products" (Abstract Only) (the "Air Liquide reference") and (5) U.S. Patent No. 4,840,805 to Sugisawa et al. (the "Sugisawa reference").
- B. Claims 3-5, 7, 10, 12, 13, 15 and 18-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over (1) U.S. Patent Pub. No. 2002/0061412 to Ueyama et al. (the "Ueyama et al. reference") in view of (2) the Peterson reference, (3) the Air Liquide reference and (4) the Sugisawa reference.
- C. Claims 3-5, 7, 10, 12, 13, 15 and 18-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over (1) GB 2,343,611 to Lett et al. (the "Lett reference") in view of (2) the Peterson reference, (3) the Air Liquide reference, (4) the Doerter reference and (5) the Sugisawa reference.
- D. Claims 3-5, 7, 10, 12, 13, 15 and 18-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over (1) U.S. Patent No. 3,852,486 to Walker et al. (the "Walker reference") in view of (2) the Ueyama et al. reference and (3) the Sugisawa reference.

All outstanding rejections are respectfully traversed in view of the foregoing amendments, as well as for the reasons previously argued and presented in the Declaration of John Keeler, Sr. filed on July 6, 2009.

Furthermore, submitted herewith is a Declaration of John Keeler, Jr. that establishes the commercial success of BLUE STAR brand flexible pouches, which are packed with pasteurized crabmeat in accordance with the pending claims. The Declaration of John Keeler, Jr. further establishes that the commercial success of the BLUE STAR brand pouches is primarily attributable to the controlled amount of ambient air in the pouches that provides an ambient air-to-crabmeat ratio of 13 to 20 percent by volume, and not to other economic and commercial factors unrelated to the pending claims.

Thus, Applicant submits that the commercial success of the BLUE STAR brand pouches is indicative of the nonobviousness of the pending claims.

Prompt and favorable action is respectfully requested.

Respectfully submitted,



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